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MagCorp Deal Makes EPA Worry

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The New York junk-bond financier who owns Magnesium Corporation of America has sold it and then repurchased it under a different name in a move that could disrupt the U.S. Environmental Protection Agency's \$1 billion toxic-waste fight with the company.

A federal bankruptcy court in White Plains, New York, approved MagCorp's sale Tuesday to U.S. Magnesium, a new company headed by Ira Rennert, whose subsidiaries have owned the Utah plant since 1989.

U.S. Bankruptcy Judge Robert Gerber, after learning about MagCorp's dire finances and failed search for an outside owner, allowed Rennert to regain ownership, through the new company, by paying \$1 million and agreeing to cover the Utah plant's debts of up to \$16 million and to assume other liabilities. The judge also ordered U.S. Magnesium to comply with environmental laws.

While a MagCorp attorney applauded the sale as "extremely positive" for the plant, its 370 employees and the community that supports it, regulators remain uncertain about the new company's ability to avoid the EPA's lawsuit.

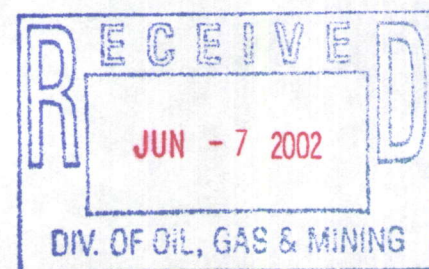
"We don't know how it affects our case," said Andy Lensink, an EPA attorney. "We think they still have to comply with the law."

Until Tuesday's sale, state and federal government lawyers and creditors had pressed the bankruptcy court for assurances MagCorp will be held to the legal and financial obligations associated with the plant, which for years topped the EPA's list of the worst toxic polluters in the nation.

The day after Rennert's deal-making, the EPA was unsure what leverage, if any, it will have to force U.S. Magnesium to clean up past toxic-waste dumping at the plant and to pursue an estimated \$1 billion in penalties against the company for ignoring the nation's dominant hazardous-waste control law, the Resource Conservation and Recovery Act. The company claims the U.S. Congress exempted them from the law.

The EPA's hazardous-waste lawsuit was snagged by the bankruptcy proceedings until two months ago, when MagCorp attorneys asked U.S. District Judge Dee Benson for an expedited ruling that its Utah plant is largely exempt from the nation's toxic-control law.

In court papers filed last week, EPA attorneys urged the court to side instead with their position: that for more than a decade MagCorp has stonewalled the toxic-waste law that requires strict control of hazardous byproducts such as the dioxins and hexachlorobenzene found at MagCorp's Tooele County plant. Both



byproducts have been linked to cancer and other serious health problems and, the EPA alleges, may be harming MagCorp employees.

MagCorp's New York attorney, Joe Smolinsky, called MagCorp "a shell" that remains in bankruptcy, but described U.S. Magnesium as a "much healthier company with a solid future."

"Their balance sheet will be greatly improved," said Smolinsky. He praised the work of MagCorp officials for arranging the sale.

Smolinsky, who also represents the financial consultant that recommended the deal, had fewer assurances for environmental officials and unnamed creditors. When asked about what happens now with the EPA toxic-waste case, he said: "I'd rather not comment on that because there is pending litigation."

And on the question of who would be obligated to clean up any past pollution, he said: "Our position is that there are no cleanup costs."

The EPA is not the only one worried about Rennert walking away from MagCorp's messes:

- * Utah has been tussling most of this year with MagCorp over a reclamation bond required by one of its two state mining permits. The state wants \$6.5 million to secure future restoration. The company has put down \$110,000 and refuses to guarantee more.

- * Texas-based Revak Energy Inc. asked the bankruptcy judge to make MagCorp pay roughly \$2 million allegedly owed for designing and building a power plant next to the magnesium plant.

- * PacifiCorp is trying to work out a new energy contract with MagCorp for electricity after their old contract expired Dec. 31 and the two wound up before the Utah Public Service Commission.

- * Rennert's companies also face environmental and financial pressures in other ventures including an Ohio steel mill that is in bankruptcy, a Missouri lead smelter blamed for elevating lead levels in the blood of nearby children and a Peruvian lead smelter also blamed for raising lead levels in children from surrounding communities.

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